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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.295 OF 2000.

Santoshkumar Surajbhan Goel	]
age: 45 years, Occn. Business by agriculturist	]
r/o Bungalow No.32, Suyojana Housing Society	] <u>Appellant</u>
Koregaon Park, Pune 411 001	] (Original
and	] complainant)
Flat No.33, Agrasen Society, Koregaon Park road,	]
Pun -411 001	]

V/s.

- | | |
|---------------------------------|------------------------|
| 1. Shri Narayan Kesu Ghule |] |
| age: 60 yrs, Occn.Agriculturist |] |
| r/ at Mohammadwadi, Tal.Haveli |] |
| District: Pune .(Abated) |] |
| |] |
| 2. Sou. Leelabai Baban Shelke |] |
| age: 36 years,Occn.Household |] <u>..Respondents</u> |
| work by agriculturist |] (Respondent |
| r/o Wadgaon Budruk, |] Nos 1 to 4 |
| Tal: Haveli, District: Pune |] original |
| |] accused |
| 3. Shri.Tanaji Laxman Kad |] Nos 1 to 4) |
| age: adult,Occn.Agriculture |] |
| and Estate Broker ,r/o village |] |
| Undri,Tal.Haveli, Dist.Pune |] |
| |] |
| 4. Shri.SureshNarayan Ghule |] |
| age: adult,Occn.Agriculturist |] |
| r/oat & post Mohammadwadi, |] |
| Tal.Haveli, Dist.Pune .(Abated) |] |

5. The State of Maharashtra

]].... Respondent

Mr. Ritesh Ratnam I/by Mr. Ganesh Gole,
for the Appellant.

Mrs. V.R. Bhosale, APP for the Respondent-
State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 4TH FEBRUARY 2016.

P.C:

1. The appellant is the original complainant, who is aggrieved on account of acquittal of the respondents, for the offence punishable under Section 420 read with 34 of the Indian penal Code, as recorded by the Additional Chief Judicial Magistrate, Pune, vide his judgment and order dated 12.11.1998, in R.C.C. No.459 of 1997.

2. Brief facts of the appeal can be stated as follows :-

Respondent Nos. 1 and 2 are the owners of the agricultural land bearing survey No.42, Hissa No.9A, admeasuring 1 Hector 7 R and Hissa No.3 admeasuring 98 R, situate at Mohammedwadi, Taluka: Haveli. Respondent No.3 introduced respondent Nos. 1 and 2 to the appellant and

informed him that respondent Nos. 1 and 2 intend to sell their land. As the appellant was interested in purchase of the land, they entered into agreement of sale dated 6th May, 1991. The consideration at the rate of Rs.1,70,000/- per acre was agreed between the parties and at the time of agreement, appellant paid some amount to the respondent No.1 and 2. Respondents agreed to measure the land with the help of Government Surveyor to fix exact amount of consideration. They also agreed to make out a clear and marketable title and to provide necessary rights of easement. According to appellant, however, within the stipulated time, respondents failed to do so. Hence supplementary agreement was executed on 26.9.1991 extending period for compliance of the formalities. Meanwhile appellant has paid total amount of Rs.4,25,000/- to respondent Nos. 1 and 2 out of estimated consideration of Rs.8,50,000/-. Appellant also issued public notice inviting objections to the proposed purchase of the land. At that time, he came across one public notice issued by Mrs. Shubhada Joglekar, in daily Prabhat on 19th May, 1992. On further enquiry, he came to know that respondent Nos. 1 and 2 had already sold the said property to Sainik Vihar Gruh Rachna Sanstha and to the said transaction, respondent Nos. 3

and 4 were witnesses and consenting parties. Appellant, therefore, realised that he was cheated by the respondents as respondents have committed breach of promise. Hence appellant approached the trial Court by filing private criminal case.

3. In support of his case, appellant examined himself and produced certain documents. Relying thereupon the trial Court framed charge against respondents, for the offence punishable under Section 420 r/w 34 of Indian Penal Code. Respondents pleaded not guilty and claimed trial, raising defence that false case is filed in order to blackmail them and to coerce them to execute sale deed in favour of the appellant. It was contended that there were legal impediments on the part of appellant himself in completion of transaction. There was absolutely no inducement offered by the respondents, for purchase of the said property by the appellant. It was further contended that the respondents are illiterate farmers; whereas the appellant is highly educated person being a Chartered Accountant. Hence there was no question of appellant being cheated by the respondents in the alleged transaction.

4. In the light of this evidence on record, the trial Court found

that essential ingredients of the offence of cheating are not made out at all. As there was no evidence about the intention of respondents being dishonest since beginning. It was held by the trial Court that mere breach of contract cannot give rise to criminal prosecution in the absence of fraudulent or any dishonest intention proved on record to constitute offence of cheating.

5. This judgment and order of the trial Court is challenged in this appeal, by learned counsel for appellant by submitting that in this case there is documentary evidence of agreement of sale and supplementary agreement proving that respondents had entered into such transaction of sale. However, they have failed to execute the sale deed despite receipt of substantial amount of consideration. According to learned counsel for the appellant, facts of the present case, therefore, clearly make out the ingredients of offence of cheating. Hence the judgment and order of the trial Court acquitting the respondents is required to be quashed and set aside.

6. Learned counsel for respondents has pointed out that respondent No.1 Narayan and respondent No.4 Suresh are no more; as a result appeal stands abated against respondent Nos 1 and 4.

7. In this case as agreement of sale is produced on record, in support of alleged transaction, the question lies is as to whether since beginning respondents were having dishonest and fraudulent intention of cheating the appellant. The law is well settled that mere breach of contract is not an offence and cannot give rise to criminal liability. In order to bring the breach of contract within the dragnet of criminal liability, the intention on the part of defaulting party has to be proved, that of dishonest and fraudulent since inception. Therefore, in the presence case, it was essential for the appellant to prove that since beginning respondents had no intention of executing the sale deed and they had necessary dishonest intention of cheating the appellant.

8. In this case on appreciation of evidence, the trial Court found that though in paragraph No.7 of the agreement, it was mentioned that the entire remaining amount of consideration was to be paid by the appellant within six months from the date of agreement and thereafter only, transaction of agreement was to be completed, appellant has not paid balance consideration amount within six months of agreement. As per his own case, even after obtaining supplementary agreement dated 26.9.1991,

the total payment made by him to the respondents was not more than Rs.4,55,000/-, out of Rs.8,50,000/-.

9. Further it is pertinent to note that the respondents have sold the land to Sainik Vihar Gruh Rachana Sanstha, by registered sale deed dated 16th July, 1992 i.e. after the stipulated period of six months from the agreement dated 6th May, 1991 or supplementary agreement dated 26.9.1991. Hence, it cannot be said that respondents had committed any breach of agreement as such. If the sale deed was to be executed subject to payment of balance consideration amount by the appellant within six months and it being transaction of immovable property, time was the essence of contract, then it was for the appellant to comply with the said term. As non compliance of the said term has resulted into breach of contract, respondents cannot be fastened with penal liability.

10. The trial Court also noted that respondents are illiterate farmers in the villages; whereas the appellant is an educated person being Chartered Accountant. Moreover, initial agreement bears the Thumb Impression of respondent No.2; whereas in the supplementary agreement her signature is shown to be appearing in English, which also creates suspicion about entire

nature of the transaction. The trial Court further found delay in lodging of the private complaint in the Court which was done only after filing of the suit.

11. In my considered opinion, in view of all these factual aspects on record, it has to be held that the trial Court has rightly held that the appellant has failed to prove its case against respondents. The impugned judgment and order of the trial Court, therefore, acquitting respondents for the offence under Section 420 r/w 34 IPC being just, legal and correct does not call for any interference. The appeal, therefore, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

C E R T I F I C A T E

Certified to be true and correct copy of the
original signed judgment